Executed this 11th day of June, 2001

Jerry L. Weikle

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act	)	
Of 1996	)	
	)	
Joint Petition of BellSouth, SBC, and Verizon	)	
For Elimination of Mandatory Unbundling of	)	
High Capacity Loops and Dedicated Transport	)	

AFFIDAVIT OF BRIAN L. BUTLER

I, Brian L. Butler, pursuant to 28 U.S.C. Sec. 1746, do hereby declare, under penalty of Perjury, that the following is true and correct:

1. I am employed as Vice President of Engineering by NuVox, Inc. ("NuVox"). I have 20 years of operational and management experience in the telecommunications industry.

2. My business address is 16090 Swingley Ridge Road, Suite 500, Chesterfield, Missouri 63017.

3. NuVox is a rapidly growing, facilities-based integrated communications and applications services provider, offering local voice and data services, domestic and international long distance services, dedicated high speed internet access, digital subscriber line access, unified voice, e-mail and fax messaging and other advanced services, including but not limited to local area and wide area network management, virtual private networks, website design, web page hosting, audio conferencing and a comprehensive set of web-based business applications. NuVox's marketing focus is to offer small and medium-sized business customers

a competitive alternative for all of their communications-related needs. NuVox provides service in 30 markets in 13 states throughout the Southeast and Midwest.

4. The purpose of my Affidavit is to provide information relevant to the Petition filed by BellSouth, SBC and Verizon (collectively, the "Joint Petitioners") which seeks elimination of mandatory unbundling requirements applicable to high capacity loops and dedicated transport.

5. NuVox has constructed its networks using what is generally referred to as a "smart build", capital efficient approach. We have installed our own voice and data switching infrastructure, but lease the transmission elements of our networks from the serving incumbent local exchange carrier ("ILEC") or, where available, from other providers ("third party providers"). NuVox does not self-provision loop or transport facilities. Even under the smart build approach, NuVox is very much a facilities-based carrier, with 30 ATM data switches and 14 Class 5 digital voice switches installed, over 240 collocations deployed and in service, and multi-service customer premises equipment supplied to many of our customers, supporting integrated voice and data service over leased DS1 loop facilities.

6. This network configuration allows NuVox to offer integrated voice and data services via broadband access to small and medium-sized business customers throughout the entire geographic extent of the city markets we have entered – i.e., we are not tied to the limits of a fiber-ring serving a small, concentrated business district, but can extend choice to business customers throughout a metropolitan area. However, this approach is premised on the availability of reasonably-priced

loop and transport facilities from the serving ILEC or from third-party providers in each of our 30 markets.

7. As it has deployed its networks over the last two years, NuVox has aggressively sought out third-party vendors in an effort to ensure that it obtains the best possible price for the leased facilities it requires to connect its customers to its switching platforms. Regarding loop facilities, NuVox's preferred approach is to utilize DS1 level circuits to provide integrated voice and data services. Most of our customers and lines are served in this manner. (For very small customers, we use leased 2-wire analog loops for voice service and DSL loops for internet access).

8. Regarding HiCap (i.e., DS1 or higher level) loops, NuVox does not obtain these facilities from third-party providers in any of our markets. Our experience has been that third-party providers do not offer a viable source of HiCap loop facilities. To the extent third-party providers have deployed any HiCap loop facilities in our markets, these facilities generally are in the form of fiber-rings with limited geographic coverage (i.e., connected to a limited number of multi-tenant buildings), which is not compatible with NuVox's approach of offering service on a ubiquitous basis throughout a metropolitan area. Moreover, even within their limited geographic coverage, the availability of facilities from third-party providers is speculative at best -- i.e., generally NuVox is not aware of third-party providers actively offering HiCap loop facilities on an unbundled, wholesale basis.

9. With respect to dedicated transport (i.e., dedicated DS1 and DS3 facilities connecting from the customer's ILEC serving end office to NuVox's hub site or to another ILEC wire center), again consistent with its smart-build approach NuVox does not self-provision these facilities. Instead, NuVox leases either DS1 or DS3 circuits (depending on capacity requirements over specific routes) from the serving ILEC or from third-party providers. With respect to DS1 dedicated transport, virtually all of the facilities NuVox obtains are from the serving ILEC. Generally, potential third-party providers of dedicated transport are facilities-based CLECs that have deployed collocations and their own dedicated transport facilities, and have made a business decision to offer portions of their transport capacity on an unbundled, wholesale basis. With respect to DS1 transport, NuVox's experience across all of its markets has been that where these third-party providers exist they either do not offer dedicated transport at the DS1 level (only at the DS3 level or higher) or that operational interfaces at the DS1 level are too problematic for third-party providers to be a viable facility source.

10. Even if third-party vendors would offer DS1 transport on an unbundled wholesale basis, those alternative vendors would only provide a partial alternative transport facility source because their own transport facilities are built to only a subset of ILEC serving wire centers, to other telecommunications carrier points of presence and to select, high density office buildings and campuses. They do not provide anything approaching the geographic ubiquitous coverage that NuVox requires to serve small and medium-sized business through a metropolitan area.

11. With respect to DS3 dedicated transport, the availability of third-party-provided DS3 facilities varies market-to-market. In some NuVox markets there is either no third-party provider of DS3 transport or only a single third-party provider and, as discussed above, within any particular market third-party providers collectively do not provide anything approaching the ubiquitous geographic coverage of dedicated transport which NuVox requires. In those markets where NuVox obtains capacity from ILEC OC rings to extend DS3s, third-party providers generally do not have the geographic coverage to offer a competitively-priced alternative to the serving ILEC. Even in these circumstances, the serving ILEC's OC ring does not offer a source of DS3 connectivity to all of NuVox's serving area, since we are serving customers (via DS1 loop/dedicated transport combinations) on a ubiquitous basis, including substantial areas not by our collocations.

12. NuVox has found that DS3 transport facilities are not uniformly available on a timely basis from the serving ILEC. For example, in Kansas City and St. Louis NuVox has encountered substantial delays from SWBT in delivery of DS3 dedicated transport facilities and has had to implement inefficient network "work-arounds" (e.g., through use of DS1 interoffice extensions connecting to alternative, distant COs where DS3 facilities were available) to accommodate these ILEC facility shortages. However, we are not in a position to simply discontinue use of the serving ILEC as a vendor in any market due to the lack of ubiquitous geographic coverage available from third-party providers.

13. Some ILECs have effectively limited the availability of third-party providers of DS3 dedicated transport by limiting or eliminating the ability of CLECs to obtain co-carrier cross-connects within ILEC wire centers. Thus, even where third-party providers are collocated in the same central office as NuVox and are willing and able to offer DS3 dedicated transport on an unbundled, wholesale basis, some serving ILECs effectively impede our ability to make use of this option by the barriers, costs and time delays they impose.

14. In some instances, ILEC special access is the only feasible alternative available to NuVox for DS3 transport -- i.e., where we obtain DS3 facilities carrying both UNE trunks and tariffed services, some ILECs (SWBT) will not permit "commingling" and will offer the DS3 carrying tariffed services only under the access tariff.

15. DS1s obtained from ILECs as special access circuits are not competitively priced. These facilities are not priced based on TELRIC and therefore do not reflect the costs of an efficient provider of transport facilities. NuVox's experience has been that ILEC DS1 transport facilities generally cost as much as 2 to 4 times the level of the same DS1 transport facility when provided as a UNE (e.g., typically Ameritech DS1 UNE transport is approximately $200 per month, whereas the same DS1 transport facility obtained under its special access tariff may cost anywhere from approximately $400 to $800 per month.) DS1 transport obtained through ILEC special access tariffs inflate a CLEC's cost of doing business to a point which is unprofitable, making it essential that ILECs come immediately into

compliance with the law and perform special access to EEL conversions in a timely and efficient manner.

16. In many other instances, NuVox cannot obtain dedicated transport from the serving ILEC directly as UNEs. This is particularly true regarding DS1 dedicated transport, but also includes some DS3 transport facilities (i.e., some DS3s connecting to ILEC central offices where NuVox does not have collocation) For these dedicated transport facilities NuVox must first lease these facilities as special access and then convert to UNEs under the Commission's special access to EEL conversion rules. DS1 and DS3 dedicated transport obtained as special access are priced excessively and, while a short-run necessity for NuVox where direct EELs are not available, do not offer a basis for providing integrated voice and data services which is economically viable. The availability of ILEC-combined DS1 loop/DS1 or DS3 dedicated transport facilities directly as UNEs -- as opposed to only through a conversion of special access facilities -- varies among ILECs and, in some instances, within an ILEC's region between states or even between portions of markets. In NuVox's seven markets in the SWBT region, in most instances we are able to obtain dedicated transport directly as UNEs as part of a DS1 loop/dedicated transport combination – i.e., the Enhanced Extended Link ("EEL"). SWBT has made these facility combinations available as UNEs as result of either state arbitration decisions or as a product of its "2A" interconnection agreements filed in conjunction with their Section 271 applications.

17. However, in most of NuVox's other markets the serving ILECs (Ameritech, BellSouth, Cincinnati Bell and Verizon/GTE) do not voluntarily offer DS1 loop/dedicated transport as UNEs directly, but instead require these facilities first be deployed and billed as special access circuits and then converted to UNE pricing as EELs. As a result, most of NuVox's DS1 dedicated transport facilities (and some DS3 transport) in markets served by these ILECs are initially ordered and billed pursuant to the ILECs special access tariff. In NuVox's markets in the BellSouth region, again in most instances we are required to obtain ILEC-combined DS1 loop/dedicated transport first as special access and then convert the facilities to EELs. There are exceptions in a couple of our markets – BellSouth has been ordered by the Georgia Public Service Commission to make these facility combinations available directly as EELs. Also, BellSouth has chosen to make these "new EELs" available in the highest density zones of their top 50 markets (i.e., they have made the choice to limit the availability of local switching/UNE platform and make new EELs available in these zones). In terms of NuVox markets, this affects Miami/Ft. Lauderdale and Atlanta. However, BellSouth has historically provisioned new EELs under timelines which are more extended that special access circuits, and this provisioning discrepancy has created a barrier to NuVox's ability to obtain these facilities as UNEs even though it has a right "on paper" to do so. In a recent decision the Georgia Commission has directed BellSouth to reduce the provisioning interval for new EELs, but it remains to be seen how quickly and effectively BellSouth comes into compliance with that requirement.

18. In considering Joint Petitioners' request for removal of mandatory unbundling requirements for HiCap loop and dedicated transport, NuVox urges the Commission to take into account the extent to which some of these very same ILECs have failed to implement the Commission's directives regarding special access to EEL conversions in a timely and efficient manner. NuVox has experienced substantial difficulty with the ILECs in accomplishing these conversions. NuVox's experience has been that the ILECs it has dealt with regarding special access to EEL conversions (Ameritech and BellSouth) have either been unprepared to process these conversions and/or have created artificial barriers to the exercise of our right to convert these facilities to UNEs. For example, Ameritech did not have the internal order processing systems and procedures in place to handle special access to EEL conversions when NuVox began the process in first quarter, 2001. Shortly thereafter, in three separate incidents, Ameritech inadvertently disconnected service to a total of 50 NuVox Ohio customers when Ameritech attempted to process the conversion of orders. At about the same time, NuVox found that BellSouth also was unprepared to promptly process special access to EEL conversions. BellSouth has raised other barriers to these conversions – e.g., it raised the specter of threatening to seek recovery of "leaky PBX surcharges" from CLECs as a consequence of their submission of conversion requests. While still-to-be confirmed, I believe BellSouth has now backed away from that position. Nevertheless, this is an indication of the type of roadblocks CLECs have faced in attempting to convert these facilities to UNE pricing.

19. Removal of the mandatory unbundling requirements for HiCap loops and dedicated transport would constitute a severe blow to competition. This request comes at a time when DS1 loop/dedicated transport is beginning to "hit its stride" in terms of an alternative provisioning method for integrated voice and data services, but depending on the extent to which ILECs would choose to abuse their market power, it could mean the demise of this competitive alternative. If the mandatory unbundling requirements are removed, NuVox fully expects that ILECs would either withdraw the availability of these facilities or, at a minimum, substantially increase prices once they are no longer subject the TELRIC pricing rules. Because there is no ubiquitous alternative to ILEC HiCap loop facilities, this could effectively remove HiCap loop-provisioned service from the scene. And even for lower bandwidth loop service, removal of ILEC dedicated transport from UNE status would produce extreme pressure on CLECs to retrench in terms of the geographic scope of their offer of service to only those concentrated areas where some amount of third-party provider facilities do exist. All of these results would be severely detrimental to the competitive market place for telecommunications services and, thus, to consumers.

20. This concludes my affidavit.

VERIFICATION

State of Missouri)
) SS
County of St. Louis)

Brian L. Butler being duly sworn states that he is the Vice President, Engineering for NuVox, Inc., and that the facts set forth above are true and correct to the best of his knowledge and belief.

Brian L. Butler

Subscribed and sworn to before me, this 8th day of June, 2001.

Juda M. Weston

JUDA M. WESTON
Notary Public-Notary Seal
State of Missouri
St. Louis County
My Commission Expires Oct. 7, 2001

My commission expires:

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996	)	CC Docket No. 96-98
	)	
	)	
Joint Petition of BellSouth, SBC, and Verizon For Elimination of Mandatory Unbundling of High Capacity Loops and Dedicated Transport	)	

AFFIDAVIT OF MICHAEL P. DUKE

I, Michael P. Duke, pursuant to 28 U.S.C. Sec. 1746, do hereby declare, under penalty of perjury, that the following is true and correct:

1. I am employed by KMC Telecom, Inc. ("KMC") as Director of Governmental Affairs.

2. My business address is 1755 North Brown Road, Lawrenceville, GA 30043.

3. KMC is a facility-based integrated communications provider offering a full range of advanced voice, data and Internet infrastructure services in 37 markets[1] across the eastern half of the United States. Since its start in 1995, KMC's business plan has been to serve business customers in Tier III markets (ranging between 100,000 and 750,000 in population) with a full array of telecommunications services with our own facilities. These facilities include a Lucent 5ESS switch and a robust advanced fiber-optic SONET backbone ring. KMC's business plan calls for a network design and deployment sufficient to reach approximately 80%

[1] Those markets are: Akron, OH; Ann Arbor, MI; Augusta, GA; Baton Rouge, LA; Biloxi/Gulfport, MS; Charleston, SC; Chattanooga, TN; Clearwater/St. Petersburg, FL; Columbia, SC; Corpus Christi, TX; Dayton, OH; Daytona beach, FL; Eden Prairie, MN; Fayetteville, NC; Fort Wayne, IN; Ft Myers, FL; Greensboro, NC; Hampton Roads, VA; Huntsville, AL; Johnson City/Kingsport, TN; Lansing, MI; Longview, TX; Madison, WI; Bethesda/Rockport, MD; Melbourne, FL; Monroe, LA; Montgomery, AL;

of the businesses in each local market through either direct fiber connections into customer locations or through the lease of unbundled network elements from the ILEC. To obtain such market coverage, KMC has made a significant investment in an local SONET network and has collocated at a minimum of three incumbent local exchange carrier (ILEC) central offices in each market: the local tandem office and two end offices.

4. The purpose of my Affidavit is to demonstrate the unsubstantiated nature of the claims made by BellSouth, SBC and Verizon (together the "Joint Petitioners") in their Petition to eliminate the unbundling requirement for high-capacity loops and dedicated transport.

5. In their Petition, the Joint Petitioners claim that "CLECs routinely build out high-capacity loops to connect customers to their fiber networks [because] the costs of doing so are economically reasonable, both because fiber costs have been decreasing and because the networks are built as close to likely customers as possible". This is not true for KMC.

   In the markets we serve, no other CLEC has deployed as much local fiber as KMC. In the 37 markets, KMC had deployed over 2,400 route miles of fiber ... on average, an astonishing 65 miles of fiber per market. In addition, KMC has taken great effort to design our network routes to pass any many business locations (within 1200 feet) as possible, using Dun and Bradstreet geo-coded market data. In all of our markets, KMC's 2,400+ route miles of fiber pass within 1200 feet of just under 100,000 business locations.[2] Yet KMC has only been able to "self-provision" fiber into **[BEGIN CONFIDENTIAL END CONFIDENTIAL]** buildings. This represents a mere **[BEGIN CONFIDENTIAL END CONFIDENTIAL]** of the addressable market.

Pensacola, FL; Roanoke, VA; Sarasota, FL; Savannah, GA; Shreveport, LA; Spartanburg, SC; Tallahassee, FL, Toledo, OH; Topeka, KS, and Winston-Salem, NC.

6. This low fiber penetration rate is in stark contrast to the penetration obtained by the purchase of unbundled loops from our collocations. In our 37 markets, KMC has invested tremendous time and expense to collocate in 140 ILEC Central Offices (COs). From these collocations, KMC has access via UNE loops to approximately 64,000 commercial buildings, of which KMC is currently providing service to **[BEGIN CONFIDENTIAL END CONFIDENTIAL]** locations, or approximately **[BEGIN CONFIDENTIAL END CONFIDENTIAL]** of all possible commercial buildings.

7. The primary reason that KMC has only **[BEGIN CONFIDENTIAL END CONFIDENTIAL]** commercial buildings "lit" is the costs to do so. Besides the cost of the actual fiber used in a lateral, the term used for a fiber extension from our SONET ring into a building, there are also costs for engineering and drafting, hardware (conduit), labor and construction permits. Added to these real, tangible costs are intangible costs of uncertainty and delay of dealing with building owners and city officials. Even though KMC still desires to serve our customers via 100% fiber, the practical result of the high costs to extend laterals to our customers is that KMC must rely on the existing ILEC facilities into these buildings. Therefore, high-capacity loops are both necessary for KMC to serve our customers, and without access to these loops, KMC's ability to serve our customers would definitely be impaired.

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[2] Per Dun and Bradstreet Market Spectrum Database Marketing System

PUBLIC VERSION

8. This concludes my affidavit.

Executed this 11th day of June 2001

Michael P. Duke

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
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Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act	)	
Of 1996	)	
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Joint Petition of BellSouth, SBC, and Verizon	)	
For Elimination of Mandatory Unbundling of	)	
High-Capacity Loops and Dedicated Transport	)	

AFFIDAVIT OF JAMES T. MARKLE

I, James T. Markle, pursuant to 28 U.S.C. Sec. 1746, do hereby declare, under penalty of perjury, that the following is true and correct:

1. I am employed as Chief Operating Officer by Cbeyond Communications, LLC ("Cbeyond").
2. My business address is 320 Interstate North Parkway, Suite 300, Atlanta, Georgia, 30339.
3. Cbeyond is a facilities-based Broadband Applications Services Provider (BASP), focusing on "bridging the digital divide", using Internet Protocol (IP) architecture to bring all the communication services that a small business needs at affordable prices typically only available to large enterprises. Cbeyond provides an integrated product of local, long distance, Internet access and Internet-based applications such as Unified Messaging, Email, E-Commerce and Web Hosting. The business strategy is to facilitate the movement of business processes via Internet access, making possible electronic communication, collaboration and e-commerce opportunities that will drive the customer's competitive strength and efficiency. Cbeyond uses an integrated IP-based

architecture and delivers converged voice, data and integrated network applications over a single platform with seamless integration and delivery.

4. The purpose of my Affidavit is to detail the problems associated with granting the Petition filed by BellSouth, SBC and Verizon (together the "Joint Petitioners") for elimination of mandatory unbundling of high-capacity loops and dedicated transport.

5. Cbeyond has investigated alternative providers of high-capacity loops and dedicated transport in the Atlanta MSA. Currently, however, there are no alternative providers to BellSouth that can provide Cbeyond with a cost effective or ubiquitous alternative for high-capacity loops and dedicated transport.

6. As a practical matter, Cbeyond does not have any alternative to BellSouth for high-capacity loops. Cbeyond serves small business customers with as few as five lines using DS-1 loops. Based on Cbeyond's research, what few competitors exist in the Atlanta MSA for high-capacity loops, serve only a limited number of high-rise buildings. The customers within these buildings are largely not part of Cbeyond's addressable market, these alternative providers do not provide the "last-mile" facilities, and therefore, Cbeyond must rely upon BellSouth's provisioning of DS-1 to serve its customers.

7. Similarly, with regard to high-capacity dedicated transport, Cbeyond has found no competitive alternative to BellSouth. While there are several high-capacity transport providers, their networks do not provide ubiquitous coverage of the Atlanta MSA. These alternative providers target certain central offices, but again, fail to provide coverage to the majority of Cbeyond's target market.

8. Cbeyond does note, however, that such alternative providers will provide high-capacity dedicated transport to Cbeyond in areas where they currently do not have coverage.

However, these alternative providers purchase the requested transport from BellSouth via BellSouth's access tariff and then mark it up and resell it to requesting carriers. The economics of purchasing such transport is cost-prohibitive and creates a barrier to entry for competitive local exchange carriers. Even if Cbeyond decides to use the alternative providers facilities, where the transport is provided as resold BellSouth special access, BellSouth refuses to interconnect these competitive facilities with the UNE loop citing BellSouth's belief that special access dedicated transport cannot be connected to UNE loops. While Cbeyond does not agree with BellSouth's stated position, BellSouth, nevertheless, has refused to interconnect these facilities to UNE loops.

9. Cbeyond does purchase high-capacity dedicated transport in very limited circumstances from one alternative provider. Such transport is purchased for Cbeyond's point of presence ("POP") site, and is in addition to the high-capacity dedicated transport purchased from BellSouth and does not include the end-user loop. This alternative transport is not cost-efficient, as it is similarly priced to BellSouth's special access transport; however, Cbeyond purchases it to ensure redundancy and for disaster recovery purposes.

10. In summary, Cbeyond does not have competitive alternatives available for high-capacity loops and dedicated transport in the Atlanta MSA. Granting the Joint Petitioners Petition would have a devastating impact and create a significant barrier-to-entry on Cbeyond's ability to compete in the local exchange market.

11. This concludes my Affidavit.

Executed this 5th day of June, 2001

James T. Markle

June 5, 2001
Jannie Harper-Lanier

Notary Public, Cobb County, Georgia
My Commission Expires March 25, 2005